

ADDITIONAL MATERIALS  
RE: Item #16  
March 9, 2007



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members  
  
From: Commission Staff  
  
Date: March 7, 2007  
  
Re: Amended Definition of PAC

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At your January 19, 2007 meeting, the Commission approved submitting to the Legislature a bill that would revise the political action committee (PAC) definition and eliminate the §1056-B filing requirement. Upon further consideration, the Commission staff asks for your approval to submit amended legislation. I have consulted with the Commission's Counsel and Assistant Director on these recommendations.

**Rationale for New PAC Definition**

- The staff continues to prefer PAC registration and reporting as the best method of public disclosure of campaign financial activity because the public has come to think of PACs as the primary way that non-party organizations influence elections. Our electronic filing and disclosure website is designed for PAC reporting, not §1056-B reporting. Once PACs e-file their reports the information is automatically available to the public on our website, and contributions and expenditures are searchable by the public. Also, PACs are required to disclose their primary decision-makers and fundraisers when they register with the Commission. PACs are required to keep financial records concerning their contributions and expenditures for two years.
- We propose to delete from the PAC definition the "funding and transfer mechanism" term in §1052(5)(A)(2), which we have found to be ambiguous and difficult to apply. Paragraphs 5(A)(3) and (4) are redundant, so we propose to eliminate 5(A)(3).
- We recommend that the definition of PAC include organizations that are raising or spending more than \$5,000 to influence candidate elections in Maine even if the organizations do not have as their major purpose influencing Maine state elections. These could include, for example, national so-called 527 organizations, or advocacy organizations based in Maine that have a different major purpose but decide to spend more than \$5,000 to influence candidate elections.
- The staff believes the \$5,000 threshold for non-major purpose organizations would avoid relatively small actors from being caught up in PAC registration and reporting.

- Although the staff prefers PAC reporting to the §1056-B requirement, we have been influenced to recommend keeping the §1056-B requirement for ballot question reporting by the U.S. District Court's Volle v. Webster decision, and by comments from the Maine Association of Nonprofits. We are concerned that it could be burdensome for the state to require individuals or non-profit organizations with a non-political major purpose to form a PAC in order to influence ballot questions, and that those burdens may be unconstitutional.

#### **Proposed Improvements to §1056-B Reporting**

- We propose to call the §1056-B requirement a "Ballot Question Report," which is a more descriptive term.
- We believe increasing the §1056-B threshold from \$1,500 to \$5,000 would ease the burden of reporting on small organizations that wish to express their position on a ballot question and that engage in limited financial or staff activity.
- The bill would clarify which contributors must be reported by §1056-B filers.
- If a person or organization gives funds to an intermediary and directs the intermediary to give them to a §1056-B filer, the filer would be required to report the original source of funds as the contributor.
- The proposed statute would require §1056-B filers to keep records for a two-year period similar to PACs. Such record-keeping is not required under current law.
- The staff makes no recommendation on which expenditures should be reported by §1056-B filers. The Legislature is considering conflicting bills on this subject.

Thank you for your consideration of this change in direction recommended by the staff.

Amended PAC definition proposed by  
Commission staff for 3/9/07 meeting

**21-A M.R.S.A. §1052(5). Political action committee.** The term "political action committee:"

A. Includes:

- (1) Any separate or segregated fund established by any corporation, membership organization, cooperative, or labor, or other organization whose purpose is to influence the outcome of an election, including a candidate or question;
- ~~(2) Any person who serves as a funding and transfer mechanism and spends money to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State;~~
- ~~(3) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that makes expenditures other than by contribution to a political action committee, for the purpose of the initiation, promotion or defeat of any question; and~~
- (4) Any organization, including any corporation or association, that has as its major purpose initiating, promoting, defeating, or influencing a candidate election, campaign, or ballot question ~~advocating the passage or defeat of a ballot question and that solicits funds from members or nonmembers and that~~ spends more than \$1,500 in a calendar year for that purpose, to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition, including for the collection of signatures for a direct initiative or referendum, in this State; and
- (5) Any organization that spends more than \$5,000 in a calendar year for the purpose of promoting, defeating or influencing in any way the nomination or election of any candidate to political office but that does not have as its major purpose promoting, defeating, or influencing candidate elections; and

B. Does not include:

- (1) A candidate or a candidate's treasurer under section 1013-A, subsection 1;
- (2) A candidate's authorized political committee under section 1013-A, subsection 2; or
- (3) A party committee under section 1013-A, subsection 3.

**21A § 1056-B. Ballot question reports, of contributions and expenditures by persons**

Any person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of ~~\$5,000~~ \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with

the Commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality.

**1. Filing requirements.** A report required by this section must be filed with the Commission according to a reporting schedule that the Commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

**2. Content.** A report must contain an itemized account of each expenditure made and each contributions received and expenditure made from a single source aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name and address of each contributor, payee or creditor. ~~Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question. The person filing the report must disclose contributions and expenditures from the beginning of the calendar year. The filer is required to report only those contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and only those expenditures made for those purposes.~~

**2-A. Contributions.** For the purposes of this section, contribution includes, but is not limited to:

A. funds which the contributor specified were given in connection with a ballot question;

B. funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question; and

C. funds which can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question.

All contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the filer are considered to be contributions to the filer. The filer shall report the original source of the contribution.

**3. Forms.** A report required by this section must be on a form prescribed and prepared by the Commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

**4. Records.** A person filing this report shall keep records as required by this subsection until 10 days after the next election following the election to which the records pertain.

**A. Detailed accounts.** The filer must keep a detailed account of all contributions made to the filer for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question and all expenditures made for those purposes.

**B. Receipts.** The filer must retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

## **21A § 1060. Content of reports**

The reports must contain the following information and any additional information required by the Commission to monitor the activities of political action committees:

- 1. Identification of candidates.** The names and mailing addresses of any candidate whom the committee supports, intends to support or seeks to defeat. The report must indicate the office that the candidate is seeking, the political party represented by the candidate, if any, the date of the contest and whether the contest is an election or a primary;
- 2. Identification of committees; parties.** The names and mailing addresses of any political committee or political party supported in any way by the registrant;
- 3. Identification of referendum or initiated petition.** The referendum or initiated petition which the committee supports or opposes and the names and mailing addresses of the organizations to which expenditures were made;
- 4. Itemized expenditures.** An itemization of each expenditure made to support or oppose any candidate, campaign, political committee, political action committee, political party, referendum or initiated petition, including the date, payee and purpose of the expenditure and the address of the payee. If expenditures were made to a person described in section 1012, subsection 3, paragraph A, subparagraph (4), the report must contain the name of the person; the amount spent by that person on behalf of the candidate, campaign, political committee, political action committee, political party, referendum or initiated petition, including, but not limited to, expenditures made during the signature-gathering phase; the reason for the expenditure; and the date of the expenditure. The Commission may specify the categories of expenditures that are to be reported to enable the Commission to closely monitor the activities of political action committees;
- 5. Aggregate expenditures.** An aggregation of expenditures and cumulative aggregation of expenditures to a candidate, campaign, political committee, political action committee, referendum or initiated petition;
- 6. Identification of contributions.** Names, occupations, places of business and mailing addresses of contributors who have given more than \$50 to the political committee after the committee has registered under section 1053, the amount contributed by each donor and the date of the contribution. All contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to a political action committee are considered to be contributions to the committee. The committee shall report the original source of the contribution as the contributor.

The information already reported as required by section 1053, subsection 7 should not be duplicated; and

**7. Other expenditures.** Operational expenses and other expenditures in cash or in kind that are not made on behalf of a candidate, committee or campaign.

**8. Organizations with other major purposes.** For purposes of subsections 6 and 7, an organization qualifying as a political action committee under section 1052(5)(A)(5) is required to report only those expenditures made for the purpose of promoting, defeating or influencing the nomination or election of a candidate to political office, and only those contributions made to the organization for that purpose.



advancing the nonprofit sector

**To:** Members of the Ethics Commission  
**From:** Brenda Peluso, Director of Public Policy  
**Date:** March 8, 2007  
**RE:** Amended PAC Definition and Changes to Section 1056-B – Agenda Item #16

Thank you for accepting my written testimony and I apologize for being unable again to attend in person.

In my last testimony to the Commission, I raised the concern I had about the prior version of this bill because for nonprofits that are tax-exempt under IRS code 501(c)(3), the formation of a PAC is problematic. At the time, I wasn't sure if it was even permitted. Legal advice has determined that it is possible, but certainly not optimal or even easy. This version of the bill retains and strengthens the reporting requirements under 1056-B and labels it clearly for the public, but not so it will discourage nonprofit participation. We greatly appreciate the staff's thoughtful consideration and willingness to revisit this issue and feel the outcome balances the need for public disclosure while preserving the system's current level of consistency with federal tax reporting requirements for 501(c)(3) organizations.

Furthermore, I believe this bill will address most of the concerns raised by the Joint Standing Committee on Legal and Veterans Affairs during hearings on other bills aimed at strengthening Maine's PAC and other organizations' election reporting regulations.

Thank you to the staff for their openness and hard work on this very complicated issue, and thank you again for this opportunity to comment. I hope this bill is referred to the legislature for further consideration and I look forward to continued participation in the process.